

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 24, 2002

AMENDMENTS TO THE DEFERRED MAINTENANCE PROGRAM REGULATIONS

PURPOSE OF REPORT

To present proposed amendments to the regulations that administer the Deferred Maintenance Program (DMP).

DESCRIPTION

The enactment of new laws and operation needs of the program have created many changes in the DMP. As a result the regulations that govern the DMP are in some cases obsolete and inconsistent with the April 2, 1997 amended policy and newly enacted laws. The Office of Public School Construction (OPSC) is presenting the attached regulations to codify and clarify these changes, as well as amend the regulations to address concerns with the approval and expenditure of DMP funds. Staff has reviewed the proposed amendments with the State Allocation Board (SAB) Implementation Committee and the following is a summary of the proposed amendments to the DMP regulations by grant types.

Basic Grant:

- Establishes the Ongoing and Major Maintenance Account. A portion of the funds deposited into this account can be used as a part of the district's match for the Basic Grant.
- Establishes provisions relating to local school board approval of the Five Year Plan and a reporting requirement for districts that do not deposit the maximum Basic Grant amount.
- Redefines a school building for county offices of education to include facilities exempt from the Field Act.
- Revises application acceptance timelines to be consistent with the end of the fiscal year.
- Allows deferred maintenance funds to be utilized for purposes of maintaining leased State Relocatable Classrooms.
- Allows districts more options in spending their Basic Grant by opening up the definition to state "district owned facilities used for school purposes".

Extreme Hardship:

- Establishes application submittal guidelines and the permissible uses of the extreme hardship grant.
- Once the total project cost for a critical project exceeds \$1,000,000, requires a 50 percent district contribution for any costs above that amount.
- Revises the 90-day reimbursement policy set in April 1997, to state that any construction expenditures incurred before the OPSC determines that the proposed project meets the hardship criteria are ineligible. This enables the OPSC to verify that the proposed project meets the criteria of a hardship project prior to the start of construction.

DESCRIPTION (cont.)

- Eliminates the offset provision for districts with additional hardships in the same fiscal year and require a 50 percent contribution for these critical projects.
- Establishes a six month progress report requirement and timelines for the auditing of critical hardship projects by the OPSC.

The OPSC is requesting that these regulations become effective for all complete applications received by the OPSC after July 1, 2002 for the 2002/2003 Fiscal Year upon approval by the SAB. This would enable the OPSC to implement the changes at the beginning of the fiscal year. If approved by the SAB, the OPSC will evaluate the effectiveness of the proposed regulations and provide a report to the SAB within one year from the date the regulations become effective.

RECOMMENDATIONS

1. Approve the proposed amendments to the regulations as shown on the Attachment and direct the Executive Officer to begin the regulatory process.
2. If by July 1, 2002, the regulations have not become effective, provide that all complete applications received by the OPSC after this date for the 2002/2003 Fiscal Year be subject to these regulations approved by the SAB.
3. Rescind the April 1997 DMP policy.

ATTACHMENT

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 12. State School Deferred Maintenance

Article 1. Definitions

Section 1866. Definitions.

- (a) In connection with the administration of the provisions of California Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5 ~~Sections 39618 to 39621, inclusive, of Article 1, Chapter 4, Part 2310.5, Division 31, Title 21, Education Code~~ and for the purpose of these regulations, the terms set forth below shall have the following meanings:
- (1) "The Act"; means EC Sections 17582 through 17588 and 17591 through 17592.5 ~~39618 through 39621, above.~~
- (2) ~~Application. A request to the State Allocation Board for approval of a five year plan of maintenance needs of a school district and for an apportionment of funds from the State School Deferred Maintenance Fund, as provided by the Act and these regulations.~~
- (3) ~~Apportionment. Amount of State funds apportioned by the Board for purposes of the application. This amount is based on the formula specified in Section 39619(b) of the Education Code.~~
- (4) "Board"; means the State Allocation Board.
"Complete Application" means a district has submitted with the application, all documents to the Office of Public School Construction (OPSC) that are required as identified in the General Information Section of the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) and the OPSC has accepted and completed a preliminary approval review.
"Critical Project" shall have the meaning set forth in Section 1866.5.
"Deferred Maintenance" means the repair or replacement work performed on school facility components that is not performed on an annual or on-going basis but planned for the future and part of the *Five Year Plan*, Form SAB 40-20 (New 04/02).
- (5) "District or Applicant School District"; shall mean an entity identified in Section 1866.1(a). A School district applying for an apportionment, as provided by the Act and these regulations, or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.
"Division of the State Architect" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety, and access compliance.
- (6) ~~Executive Officer. The Executive Officer of the State Allocation Board.~~
"Extreme Hardship Grant" means a grant provided by the State to complete the critical project, as provided by EC Section 17587 and Regulation Section 1866.5.2.
"Financial Test" shall have the meaning set forth in Section 1866.5(a).
- (7) "Five Year Plan of Maintenance Needs"; Shall have the meaning set forth in Section 1866.4. The district's plan in priority order reflecting the district's total deferred maintenance needs, to accomplish the major repair or replacement workload annually over a five year period using the format to be supplied by the Executive Office of the Board.
"Matching Funds" means an amount of funds the district deposits into the "district deferred maintenance fund" to receive either a maximum or prorated basic grant.
"Maximum Basic Grant" means an amount of State funds apportioned by the Board for purposes of the *Five Year Plan*, Form SAB 40-20 (New 04/02). This amount is based on the formula specified in EC Section 17584(b).
"Prorated Basic Grant" means the prorated amount of the maximum basic grant apportioned by the Board due to insufficient funding for the Deferred Maintenance Program (DMP).
"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the DMP.

"OPSC Deferred Maintenance Extreme Hardship Workload List" means a list of extreme hardship funding applications authorized by EC Section 17587 for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) but not yet included on the DMP Extreme Hardship Unfunded List.

"OPSC Extreme Hardship Unfunded List" means a information list of unfunded critical projects awaiting an Extreme Hardship Grant under the provisions of the DMP.

"OPSC Modernization Workload List" means a list of School Facility Program (SFP) modernization projects for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Form SAB 50-01, *Enrollment Certification/Project*, (Revised 01/01); Form SAB 50-02, *Existing School Building Capacity*, (Revised 01/01); Form SAB 50-03, *Eligibility Determination*, (Revised 01/01); and Form SAB 50-04, *Application for Funding*, (Revised 03/01), under the SFP.

- (8) ~~The district's plan in priority order reflecting the district's total deferred maintenance needs, to accomplish the major repair or replacement workload annually over a five year period using the format to be supplied by the Executive Officer of the Board.~~
- (9) "Repair" means involves the work necessary to restore deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and floor wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials or such other items as may be approved by the State Allocation Board, to such condition that the school buildings may be effectively utilized for their designated purposes.
- (10) "Replacement" means the work necessary to replace those school building systems itemized in subparagraph 8, "Repair" above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

"Routine Maintenance" means the school facility component work performed on an annual or on-going basis each year to keep building facilities in proper operating condition.

"School Facility Program (SFP)" means the Leroy F. Green School Facilities Act of 1998.

"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.

"Total Estimated Cost" means an estimated cost of the critical project on which the extreme hardship grant is calculated.

- (11) ~~Critical Project. A project at one school in the five year plan which if not completed in one year would result in serious damage to the remainder of the facility or would result in a risk of injury or illness to the pupils attending the facility. The Board shall have the authority to approve more than one critical project in a district's five year plan, for completion in the same year, if the Board, after reviewing the additional critical project(s), has made a determination that approval of such additional critical project(s) is justified in order to abate a risk of injury or illness to the pupils attending the facility. A critical project for a district with only one school may also include additional major repair or replacement work deemed essential for the basic utilization and functioning of the school.~~

Note: Authority cited: Sections 17705 and 17714, Education Code 15503, Government Code.

Reference: Sections 39618-39624, 17582-17592.5, Education Code.

Article 2. Eligibility to Receive DMP Grants

Section 1866.1. Prerequisites to Receiving an Apportionment-Basic or Extreme Hardship Grant.

The prerequisites to receiving a grant, as provided by the Act and these regulations, include the following:

- (a) ~~The prerequisites necessary for a district to receive an apportionment, as provided by the Act and these regulations, include the following:~~ Operate as one of the following:
- (1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or
 - (2) A County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils;
or
 - (3) A regional occupational center identified in EC Section 17592.5; and
- (4) ~~(b) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in EC Section 17582(a) and these regulations; and 39618 of the Education Code, as amended by SB 88, Chapter 40/80 and has deposited into said fund an amount of local funds.~~
- (2) ~~(c) That the applicant school district has a Board approved Five Year Plan, Form SAB 40-20 (New 04/02) complying with Section 1866.4, which includes the fiscal year of funding. That the Superintendent of Public Instruction has provided the Board with the certification as required by Section 39619(a) of the Education Code.~~

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39624~~ 17582, 17584, 17587, 17591, 17592.5 Education Code.

Article 3. DMP Application Procedure

Section 1866.2. Form of Application-DMP Application for Basic Grant.

An eligible district seeking funding for a DMP Basic Grant shall complete and file with the OPSC, the Five Year Plan, Form SAB 40-20 (New 04/02), which is incorporated by reference. A request to the Board for an apportionment under the Act shall be transmitted to the Executive Officer for recommendations and presentation to the Board. Such request shall be in letter form signed by the Superintendent of the District and having attached thereto the district's five year plan of maintenance needs as prescribed by Section 39620 of the Education Code and these regulations.

Note: Authority cited: Section 15503, Government Code.

Reference: Section ~~39620~~ 17591, Education Code.

Section 1866.3. Filing and Review of Applications-DMP Application for Extreme Hardship Grant.

Applications for an apportionment shall be filed with the Executive Officer prior to April each year. All applications received by the applicable date, will be presented to a subsequent meeting of the Board for consideration in the distribution of State School Deferred Maintenance funds which are made available for the fiscal year. The Board, by the unanimous vote of the members present, can make an exception to the filing date. An eligible district seeking funding for a DMP extreme hardship grant shall complete and file with the OPSC, the Extreme Hardship Funding Application, Form SAB 40-22 (New 04/02), which is incorporated by reference.

Note: Authority cited: Section 15503, Government Code.

Reference: Section ~~39620~~ 17587, Education Code.

Article 4. Five Year Plan of Maintenance Needs-Basic Grant Request and Apportionment

Section 1866.4. Form of Five Year Plan Requirements of Maintenance Needs.

- (a) EC Section 17591 Section 39620 of the Education Code establishes the requirement need of filing with the Board a five year plan of the for deferred maintenance needs of the district. The Five Year Plan, Form SAB 40-20, (New 04/02) is a summary of proposed projects the district plans on completing annually over the next five fiscal years using the basic grant. The fiscal year the plan commences is determined by the fiscal year in which it was filed. New and revised plans are accepted on a continuous basis for the current fiscal year up to the last working day in June. Revisions are not accepted for prior fiscal years.
- (b) (a) Under the following circumstances, a revised plan would need to be submitted to the OPSC: A sample format for the school district five year plan of maintenance needs, designed to provide the minimum necessary information required by the Board to make approval determinations, shall be supplied by the Executive Officer of the Board upon request. Major repair or replacement projects to be included in the plan must conform to those categories authorized in Section 39618 of the Act and these regulations. Assignment of priorities by the district should be made in such order that will emphasize those project categories that would prevent further severe deterioration and/or damage to school facilities.
- (1) The plan has expired.
- (2) Work will be performed that is not listed on the plan or at a school not listed on the plan.
- (3) If work listed on the plan was performed using an SFP modernization or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.
- (e) (b) A district submitting a new plan or revising a plan under (a) above must be able to certify that the plans and proposals for expenditures of funds, listed on the Five Year Plan, Form SAB 40-20 (New 04/02) submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to EC Section 17584.1(a). Eligible items of major repair or replacement shall be limited to those school facility components which have approached or exceeded their normal life expectancy unless a history of continued repair indicates a shortened life expectancy.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39624~~17582, 17584.1, 17591, Education Code.

Section 1866.4.1. Permissible Use of the DMP Basic Grant.

The district may include on its Five Year Plan, Form SAB 40-20 (New 04/02) a repair or replacement project, provided it meets all the following criteria:

- (a) Conforms to the deferred maintenance activities authorized in EC Section 17582(a) or these regulations, which has approached or exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy, and;
- (b) Performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the Five Year Plan, Form SAB 40-20 (New 04/02) for these facilities.
- (c) Facilities owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the Five Year Plan, Form SAB 40-20 (New 04/02).

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17280, 17582 and 17591, Education Code.

Section 1866.4.2. Calculation of Basic Grant and Apportionment of Basic Grant.

After July 1 each fiscal year, the Board shall apportion to districts a basic grant for the DMP. A maximum basic grant is calculated as stated for each of the following:

- (a) School districts and regional occupational centers using the formula set forth in EC Section 17584(b).
- (b) CSSs who meet the provisions of EC Sections 17584, 17591 and, if applicable, 17585, an amount equal to one dollar (\$1.00) for each one dollar (\$1.00) of local funds up to a maximum of one-half percent of the total general funds and adult education funds budgeted by the CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, or revenues that are passed through to other local educational agencies, to the extent of funds legally available pursuant to EC Section 17080.

If sufficient State funding is not available, the Board shall apportion to all districts except those that are receiving a basic grant with an extreme hardship grant, a prorated amount of the maximum. This amount is known as the prorated basic grant.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 2553 and 17584, Education Code.

Section 1866.4.3. District Deposit of Matching Share.

To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar-for-dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from any non-restricted fund, unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 ½ percent into that fund may be used towards the district's matching share. Districts may either:

- (a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the *Certification of Deposits*, Form SAB 40-21 (New 04/02), which is incorporated by reference. These funds are not available for eligible deferred maintenance projects listed on the *Five Year Plan*, Form SAB 40-20 (New 04/02), until transferred into the District Deferred Maintenance Fund.
- (b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the *Certification of Deposits*, Form SAB 40-21 (New 04/02). These funds are available to the district to perform work on the *Five Year Plan*, Form SAB 40-20 (New 04/02).

Note: Authority cited: Section 15503, Government Code

Reference: Sections 17070.75, 17582, and 17584, Education Code.

Section 1866.4.4. Carryover of Unmatched State Funds.

Any funds deposited and not matched by the State can be carried over to the next fiscal year. A district can apply unexpended, unmatched balances past the next fiscal year under the provisions of EC Section 17583, and then reaffirm by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

Carryover that has been reported on the *Certification of Deposits*, Form SAB 40-21 (New 04/02) is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582 and 17583, Education Code.

Article 4.5. Funding Limitations-

Section 1866.4.5. County Superintendents of Schools Funding Limitations.

~~The Board shall apportion from the State School Deferred Maintenance Fund, to County Superintendents of Schools who meet the provisions of Education Code Sections 39619, 39620 and, if applicable, 39619.2, an amount equal to one dollar (\$1.00) for each one dollar (\$1.00) of local funds up to a maximum of one-half percent of the total general funds and adult education funds budgeted by the County Superintendents of Schools for the fiscal year, exclusive of any amounts budgeted for capital outlay or debt service, to the extent of funds legally available pursuant to Education Code Section 17780.~~

~~Note: Authority cited: Section 15503, Government Code.~~

~~Reference: Sections 2553, 39618, 39619.2 and 39620, Education Code; and Sections 15502-15503, Government Code.~~

Section 1866.4.5. Release of State Funds.

The CSSs shall report the district's deposit on the *Certification of Deposits*, Form SAB 40-21 (New 04/02). The Form is due to the OPSC no later than 60 days after the maximum or prorated basic grant is apportioned by the Board. Any *Certification of Deposits*, Form SAB 40-21 (New 04/02), received after 60 days will be brought to the Board on a case-by-case basis to determine if the funds will be released.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17584, Education Code.

Section 1866.4.6. Failure to Deposit Matching Funds.

A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17584 and 17584.1, Education Code.

Article 5. Extreme Hardship Grant Application and Apportionment

Section 1866.5. Eligibility Requirements. Apportionment of Hardship Funds from State School Deferred Maintenance Fund.

A district may be eligible for an extreme hardship grant, provided the district demonstrates to the Board that there is a critical project on the *Five Year Plan*, Form SAB 40-20 (New 04/02), which meets all the following criteria:

(a) Financial Test

(1) The total estimated cost of the critical project is greater than two times the district's maximum basic grant.

(b) Health and Safety Test

(1) The project if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

An extreme hardship grant is available to repair or replace an existing school building component, authorized by EC Section 17582 or these regulations, located within existing district owned classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space located on a school site), if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk.

- ~~(a) No district contribution beyond one-half of one percent of its total general and adult education funds budgeted for the fiscal year (excluding the amounts budgeted for capital outlay or debt service) shall be required for the first critical project of a district in any given fiscal year.~~
- ~~(b) A district contribution of 50% percent shall be required for the second critical project of a district in any given fiscal year to be made by one of the following methods:~~
 - ~~(1) Cash contribution.~~
 - ~~(2) An apportionment pursuant to Education Code Section 39619.5, provided that the district agrees to repay its 50% percent share of the additional critical projects as an offset of future apportionments allowed pursuant to Education Code 39619 in an amount equal to ½ one-half of 1% one percent of the district's current year budgeted General and Adult Education Funds exclusive of amounts budgeted for capital outlay or debt service per year for a period not to exceed five years or until apportionment is repaid.~~
- ~~(c) A cash contribution of 50% percent shall be required by the district for each additional critical project, beyond two, of a district in any given fiscal year.~~
- ~~(d) For hardship apportionments made in or prior to the 1984/85 fiscal year, the State Allocation Board may waive the balance of any required offset provision from future apportionments made pursuant to Education Code Section 39619.~~

Note: Authority cited: Section 155503, Government Code.

Reference: Section ~~39618-39624~~ 17582, 17587, 17588, Education Code.

Section 1866.5.1. Application Submittals.

- (a) For the OPSC to deem an application complete, a district requesting an extreme hardship grant shall submit to the OPSC an *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02), along with all documents requested in the General Information Section of the Form. Additional documentation identifying how the request meets the requirements of EC Section 17587 may be required.
- (b) More than one *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02), may be submitted by a district in a fiscal year provided each project meets the eligibility requirements set forth in Section 1866.5. The OPSC will present projects to the Board in the order of date received. Complete applications are accepted on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the Board in the next funding cycle.
- (c) The district shall submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02). If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility. The Board will approve reasonable and appropriate funds to mitigate the conditions, which makes the project qualify as a hardship under EC Section 17587, if the costs are consistent with the Saylor Current Construction Costs.

Note: Authority cited: Section 155503, Government Code.

Reference: Sections 17587, Education Code.

Section 1866.5.2. Determination of Extreme Hardship Grant Amount and District Contribution.

- (a) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum Basic Grant and State matching share that is less than \$1,000,000, shall be determined by either of the following:
 - (1) For a total project cost that is less than \$1,000,000, the extreme hardship grant will be determined by taking the total project cost less the district's maximum basic grant, less the State's matching share.
 - (2) For a total project cost that exceeds \$1,000,000, the extreme hardship grant will be determined by taking \$1,000,000 less the district's maximum basic grant, less the State's matching share. The total of that amount plus 50 percent of any project costs above \$1,000,000 will be the State's hardship contribution. The district's contribution will be 50 percent of the remaining excess above \$1,000,000 and the district's maximum basic grant.

(b) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum basic grant and State matching share that exceeds \$1,000,000, shall be determined by the following:

(1) From the total project cost deduct the district's maximum Basic Grant and State matching share. The remaining amount will be divided in half between the district and the State.

The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project.

(c) An extreme hardship grant for each additional hardship project beyond one in any given fiscal year shall be determined by dividing the total project cost in half. A cash contribution of 50 percent will be required from the district.

(d) A district with only one school may include other major repair or replacement work deemed essential for basic utilization and functioning of the school, without being subject to subsection (b).

If a district receives an unfunded approval pursuant to Section 1866.5.4, the extreme hardship grant will be an estimate based on the current maximum basic grant and state matching share and will be re-calculated using the maximum basic grant and state matching share at the time of funding by the Board.

Note: Authority cited: Section 15503, Government Code and Section 17588, Education Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.43. Project Priorities Due to Insufficient State Funds.~~Prioritization of Critical Project Categories for Hardship Apportionments.~~

~~(a) In the event available funding is insufficient to fully fund all hardship requests in any given fiscal year, When funds are not available, project requests that meet the criteria for funding are presented to the Board on a continuous basis throughout the fiscal year and are included on an unfunded list based on the date the complete critical hardship application was received by the OPSC, the Board shall utilize the following prioritized list to apportion funds for critical hardship projects:~~

(b) The Board shall utilize the following prioritized list to apportion extreme hardship grants for critical projects when funds become available:

<u>Priority</u>	<u>Description of Projects</u>	<u>Priority No.</u>
	<u>A project that meets the requirements of (c) below.</u>	1
	<u>Underground Toxic Contaminated Tank Clean-Up/Removal</u>	
	<u>All other eligible projects as defined in EC Section 17582(a) or these regulations.</u>	2
	<u>Roofing</u>	
	<u>Plumbing (Water/Sewer)</u>	3
	<u>Heating</u>	4
	<u>Air Conditioning</u>	5
	<u>Electrical</u>	6
	<u>Wall Systems</u>	7
	<u>Floor Systems</u>	8
	<u>Paving</u>	9
	<u>Other</u>	10

(c) At the time the complete application is filed with the OPSC, a district requesting Priority One status shall submit a resolution passed by the district's governing board that includes the following:

(1) Describe in detail the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) Identify the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) Identify how the board plans on housing the pupils until the facility can be re-opened.

An assessment will be made by the OPSC and the Board to determine if the critical project meets the Priority One requirements.

(d) When funds become available, the requests included on the OPSC Extreme Hardship Unfunded List will receive funding in the following order, provided the project still meets Section 1866.5(a):

(1) Increases, if the original request has already received an apportionment.

(2) Priority One Projects.

(3) All other eligible projects as defined in EC Section 17582(a) or these regulations.

Within each category, projects will be funded in the order the project was placed on the unfunded list. Projects that do not receive funding will remain on the unfunded list for a future funding cycle.

(b) (e) The Board may make exceptions to the priorities on a case-by-case basis for the benefit of the pupils affected.

(e) (f) The Board shall maintain a sufficient reserve for unexpected emergencies and on-going cost increases.

Note: Authority cited: Section 15503, Government Code; and Sections 17705 and 17714, Education Code.

Reference: Sections 39618-39624, 17587 and 17588, Education Code.

Section 1866.5.4. Reimbursement.

(a) Reimbursement of eligible architect/engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC.

(b) After written determination by the OPSC that the project is approvable, reimbursement of eligible construction expenditures will be allowed. If a district incurs construction costs prior to that date, all construction expenditures for the project will not be reimbursed.

(c) In the case where a project meets the criteria of priority one hardship pursuant to Section 1866.5.3(c), districts can contact the OPSC to request an expedited determination of the eligibility of the hardship project. The OPSC will respond within five working days. If OPSC does not respond within five working days, the project will be deemed approvable for eligible construction expenditures.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.5. Permissible Uses of Extreme Hardship Grant Funds.

The extreme hardship grant shall be used for the critical project approved by the Board and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs. Architect or engineer's fees up to 12 percent of the construction costs will be deemed eligible as well as reasonable testing, inspection, and plan checking fees. The grant may not be used for any of the following:

(a) Construction costs incurred prior to the OPSC determining that the project is approvable.

(b) Expenditures required by local mandate that are not prescribed in State law.

(c) Asbestos abatement, sampling, testing necessary as a result of a SFP modernization project or a Federal Renovation Program project.

(d) Non-owned facilities.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.6. Ongoing Project Cost Increase.

A district may request an increase in funding for ongoing project costs under either one of the following conditions:

- (a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. The OPSC may request that the project be re-bid prior to processing the increase for funding.
- (b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.

Any Board approved increase to the extreme hardship grant will be subject to the requirements of Section 1866.5.2.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587 and 17588, Education Code.

Section 1866.5.7. Release of State Funds.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal by the district of the *Fund Release Authorization*, Form SAB 40-23 (New 04/02), which is incorporated by reference, and supporting documentation requested in the General Instruction Section of the form. A district must submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02), within one year of the apportionment of the extreme hardship grant for the project. After reviewing the submittal, the OPSC may request to the Board, based on the supporting documentation, that the extreme hardship grant be adjusted to reflect the actual project costs.

Should the district only provide documentation to support the release of funding for a portion of the project, the OPSC shall prorate the fund release based on the supporting documentation.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.5.8. Progress Report and Time Limit on Extreme Hardship Grant Apportionment.

Within one year of the extreme hardship grant apportionment by the Board the district shall:

- (a) Complete the critical project; and
- (b) Submit the *Fund Release Authorization*, Form SAB 40-23 (New 04/02) and supporting documentation pursuant to Section 1866.5.7.
- (c) If (b) above has not been met within six months of Board apportionment, the district is required to submit a progress report in the form of a narrative to the OPSC. The report shall contain a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, the entire extreme hardship grant shall be presented to the Board for rescission and, if applicable, the portion of the Basic Grant the district received due to the extreme hardship grant funding unless the district submits a request for time extension.
- (d) The Board may approve a time extension for the project based on the following:
 - (1) A provision for a six-month time extension if the district has completed the plans and they have been submitted to the DSA for approval.
 - (2) A provision for a six-month time extension when the plans are DSA approved and the project is currently out to bid.
 - (3) A provision for up to a nine-month time extension when the district can demonstrate to the Board that circumstances exists beyond the district's control.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17587 and 17588, Education Code.

Section 1866.5.9. Exemptions to District Contribution.

Monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution as required in Section 1866.5.2(a)(2) or (b)(1).

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17587, Education Code.

Section 1866.6. Method of Payment to School District.

~~(a) Each apportionment when ready for payment shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.~~

Note: Authority cited: Section 15503, Government Code.

Reference: Section 39618-39621, Education Code.

Article 6. ~~Expenditures~~ Miscellaneous

Section 1866.7. Control of Expenditures.

~~EC Section 17582(c), 39618(c) of the Education Code~~ provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to ~~subdivision (a) or (b) of EC~~ Section 17584(a) or (b) 39619 may be expended by the governing board for any purpose except those specified in ~~EC~~ Section 17582(a). ~~39618(a) of the Education Code.~~

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39621~~ 17582, Education Code.

Section 1866.8. Expenditures by Districts Subject to Public Contract Code ~~Competitive Bidding~~.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in ~~EC~~ Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code (PCC) and the California Code of Regulations (Title 24). An "emergency" contract must be awarded under the provisions of the PCC Section 20113. ~~39618 and 39619.5 of the Education Code shall be made subject to competitive bidding where, and in the manner, required by the Education Code.~~

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39621~~ 17582, 17584, and 17587, Education Code.

Section 1866.9. ~~Compliance with Laws.~~ Program Reporting Requirements.

A district receiving funds in accordance with Section 1866.5.2 shall submit an expenditure report from the district on the Expenditure Report, Form SAB 40-24 (New 04/02), which is incorporated by reference. The expenditure report shall be due no later than two years from the date any funds were released.

~~All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.~~

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39621~~ 17587, Education Code.

Section 1866.9.1. Expenditure Audit.

When the district has received funds pursuant to Section 1866.5.2, the project will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of EC Section 17582(a), 17587, and Section 1866.5.5.

When the OPSC receives the final expenditure report from the district on the *Expenditure Report*, Form SAB 40-24 (New 04/02), an audit of the expenditures by the OPSC shall commence within one year of the report for all extreme hardship grant apportionments made by the Board after these regulations become effective. The OPSC shall complete the audit within six months, unless additional information requested by the district has not been received.

The district shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.

Section 1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39621~~ 17582-17592.5, Education Code.

Section 1866.11. Payment and Performance Bonds.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections ~~39618-39621~~, Education Code.

Section 1866.12. Earned Interest on DMP Grants.

Earned interest on State funds received in accordance with the Act shall be treated as follows:

- (a) One half of any interest earned on DMP grant funds provided pursuant to Section 1866.4.2 may be applied towards the district match in any given fiscal year.
- (b) All interest earned on DMP grant funds provided pursuant to Section 1866.5 shall be applied to eligible project costs for the project pursuant to Section 1866.5.5 or returned to the State.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17582, 17584, and 17587, Education Code.

Section 1866.13. Duplication of Applications.

If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization project must be withdrawn prior

to the release of any extreme hardship grants to the district.

If the district's application for FRP grants or SFP modernization grants involve work currently included on the district's *Five Year Plan*, Form SAB 40-20, (New 04/02) pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grants or SFP modernization grants from the Form prior to the release of any FRP grants or SFP modernization grants to the district.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17587 and 17591, Education Code.

Section 1866.14. Amending and Withdrawal of Extreme Hardship Funding Applications.

The district may not amend an *Extreme Hardship Funding Application*, Form SAB 40-22, (New 04/02) submitted to the OPSC that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn and resubmitted to include the additional work. The district must request that the application be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC.

Note: Authority cited: Section 15503, Government Code.

Reference: Section 17587, Education Code.